IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 5959 of 1997

Between:

D.Vykuntarao S/o.Mamulu,

No.453118, Driver,

Parvathipuram RTC Depot,
Vizianagarm District.

..... PETITIONER

AND

1. The Industrial-cum-Labour Court,

Rep by its Chairman & Presiding Officer
Visakhapatnam.
2. The Depot Manager, APSRTC,
Parvathipurm, Vizianagaram.
3. The Divisional Manager,
APSRTC, Vizianagaram.
4. The Regional Manager,
APSRTC,Vizianagaram.
5. The APSRTC Rep by its Chairman & Managing Director
Musheerabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to May be pleased to issue a writ, order or direction more particularly one in the nature

of writ of Mandamus directing the respondents 2 to 5 to reinstate the petitioner as driver with all the attendant benefits, w.e.f.10.4.92 by declaring the action of the 2nd respondent in passing an order Dt: 10-4-92 through his Proc.no.01/2(22)/91, removing the services of the petitioner from service as driver in APSRTC, which was confirmed by the 3rd respondent through his Proc.No.PA/20(43)/92, Dt: 20-10-92 and also by the 4th respondent through his proc.No.PA/20(162)/92 Dt: 6-3-93 and also the action of the 1st respondent in dismissing the dispute raised by the petitioner in I.D.No.135/93 by its order Dt: 25-9-95 which was notified by the Government on 15-2-96 through its G.O.RtNo.2892 as highly arbitrary, improper , contrary to law , violation of the fundamental rights and the principles of Natural justice.

Counsel for the Petitioner: MR.B.GAJENDER REDDY

Counsel for Respondent No.1: G.P FOR LABOUR

Counsel for Respondent Nos.2 to 5: B.G.UMA DEVI (SC FOR APSRTC)

The Court made the following:

O R D E R:

Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondent-Corporation.

The petitioner, who was working as a Driver in the respondent-Corporation, filed this

writ petition, *inter alia,* assailing the impugned award passed by the first respondent herein in I.D.No.135 of 1993 dated 25-09-1995, wherein the case of the petitioner was rejected and the same was notified by the Government on 15-02-1996, through G.O.Rt.No.2892.

The case of the petitioner is that he has been in service in the respondent-Corporation as a Driver since 13-03-1981. However, on 30-11-1991, while the petitioner was driving the bus, an accident occurred at Chinabogili. Whereupon, he was suspended on 18-12-1991 and a charge sheet was issued to him. After considering the petitioner's explanation, the order of removal was passed on 10-04-1992 by the second respondent. The appeals and further revision application filed by the petitioner did not yield any result. Therefore, he raised a dispute before the first respondent under Section 2A(2) of the Industrial Disputes Act, 1947, which was taken up as I.D.No.135 of 1993. The Tribunal has considered the matter and recorded a finding that the domestic enquiry conducted by the Corporation is invalid and ultimately agreeing with the punishment imposed by the Corporation, dismissed the I.D and passed nil award.

The learned counsel appearing for the petitioner submits that having regard to the fact that there is a clean acquittal on the criminal prosecution launched against the petitioner, in respect of the same accident, the respondent-Corporation ought not to have imposed grave punishment, which has no nexus to the gravity of the offence made against him.

The learned standing counsel appearing for the respondent-Corporation sought to sustain the impugned action on the ground that since the accident is fatal, the punishment of removal of the petitioner from service by the respondent-Corporation is justified.

Considering the submissions made and also on perusal of the entire material on record, the only question, which falls for consideration is as to whether, in the facts and circumstances, the punishment of removal of the petitioner from service is justified.

There is no dispute to the fact that the petitioner has been working in the respondent-Corporation since 1981 and has
unblemished record in service. It is only as a result of the accident, which occurred on 30-11-1991, the present disciplinary proceedings have been initiated and

ultimately led to removal of the petitioner from service. Whereupon, the petitioner's appeal and review also did not yield any result and subsequently the dispute referred to the first respondent was also rejected. However, on a reading of the above, it is seen that several aspects have not been properly taken into account, especially in view of the fact that the petitioner was acquitted in a criminal case vide C.C.No.296 of 1991, on the file of the Judicial First Class Magistrate, Bobbili as per Judgment dated 14-02-1995. Though it may not be binding or has a conclusive force, it should be taken as a whole as one of the relevant circumstances, with persuasive value. Further, it is also to be seen that normally in respect of such accidents, the respondent-Corporation is not taking any departmental action against the persons. On the face of it, the imposition of punishment of removal of the petitioner from service is unjust and has no nexus to the gravity of the offence as alleged. In the circumstances, it cannot be said that the respondent-Corporation is justified in imposing such punishment.

Accordingly, the writ petition is allowed and the impugned award is set aside. The impugned action on the part of the respondent-Corporation in removing the petitioner from service as per order dated 10-04-1992 and consequent orders thereupon i.e., in appeal and review are set aside. The petitioner shall be reinstated into service with continuity of service, with entire back wages and also other benefits to which he is entitled, under the Regulations. No costs.

31-12-2004.

Lrkm.

That Rule Nisi is made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday the Thirty First day of December Two Thousand and Four.

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ASSISTANT REGISTRAR

To

1. The Chairman & Presiding Officer, Industrial-cum-Labour Court,

Visakhapatnam.
2. The Depot Manager APSRTC
   Parvathipurm, Vizianagaram.
3. The Divisional Manager
   APSRTC, Vizianagaram.
4. The Regional Manager
   APSRTC,Vizianagaram.
5. The Chairman & Managing Director, APSRTC,
   Musheerabad, Hyderabad.

6. 2CCs to the G.P for Labour, High Court Buildings, High Court of A.P.,

Hyderabad(O.U.T).

7. 2CD copies.